

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:95CR6**

SHAHBORN EMMANUEL (2),)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

THIS MATTER is before the Court on Petitioner's "Motion for Specific Performance and Withdrawal of Guilty Plea," filed December 9, 2005.

On October 5, 1995, pursuant to a written Plea Agreement with the Government, Defendant pled guilty to Count One of the Bill of Indictment. Subsequent to entering this plea, the Court ordered Defendant to undergo a psychiatric evaluation. On August 1, 1997, the Court held a competency hearing at which time the Court determined that based on the psychiatric evaluation, Defendant was competent. Also on August 1, 1997, the Court sentenced Defendant to 84 months imprisonment to run concurrently with any sentence Defendant was already serving and with any sentence for which Defendant was currently subject. Defendant did not file an appeal or a Section 2255 motion.

Defendant now asks the Court to allow him to withdraw his guilty plea. Defendant contends that in exchange for entering a plea of guilty, the Assistant United States Attorney told Defendant that his federal sentence would run concurrently with a sentence he was to serve in South Carolina. Defendant argues that despite this agreement, he is now required to serve his

South Carolina sentence.

Notably, Defendant reaffirmed his guilty plea on August 1, 1997, and proceeded with his sentencing. Defendant did not appeal his sentence nor did he contest his sentence by filing a Section 2255 motion. Therefore, this Court does not have jurisdiction to rule on Defendant's Motion to Withdraw Plea. Consequently, Defendant's Motion is moot.

IT IS, THEREFORE, ORDERED that Defendant's "Motion for Specific Performance and Withdrawal of Guilty Plea" is hereby **DENIED**.

The Clerk is directed to send copies of this Order to Defendant, defense counsel, and the United States Attorney.

Signed: February 2, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
Chief United States District Judge

